Arb. Case No.33 of 2007

6.11.2007 Present: Mr. J.S. Bhogal, Sr. Advocate with Mr. Suneet Goel, Advocate, for the petitioner.

Mr. Shrawan Dogra, Advocate for the respondents.

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The petitioner has filed this application under Section 9 of the Arbitration and Conciliation Act 1996 (for short 'Act'), restraining the respondents during the pendency of the arbitration proceedings from enforcing the Bank Guarantees furnished by the petitioner as detailed in para-7 of the petition.

The facts in brief are that respondents had placed some purchase orders to the petitioner for supplying cables. The materials were dispatched to the various consignees as per the purchase orders, such materials were received in the stores of the respective consignees and entered in the measurement books except for a small quantity worth Rs.2-3 lacs which though received in Maliana Stores of HPSEB but was not entered in the measurement books.

The petitioner was surprised to receive a complaint dated 7.7.2005 from Assistant Engineer regarding defects in a few numbers of cable coils supplied. The petitioner without going into the merits of the said complaint, replaced the said materials. In order to show his bonafides the petitioner also addressed communications dated 8.8.2005 to other stores of HPSEB to ascertain any other complaints with respect to materials supplied, pursuant to which some consignees gave some details of extremely minor quantities of

materials alleged to be defective. The said materials were also replaced by the petitioner. The petitioner requested the authorities of the respondents to intimate about the lot numbers, date and the purchase orders against which the alleged defective materials had been supplied. The HPSEB authorities, however failed to provide any such information to the petitioner and on 18.8.2005 respondent No.2 proceeded to cancel order for the balance materials.

The respondent No.2 vide letter dated 13.3.2007 has asked the petitioner to replace some materials. The HPSEB has held out threats to enforce the bank guarantees unless the same were got extended by the petitioner and petitioner had no option but to get the same extended and at present the following bank guarantees are lying with the HPSEB which have been withheld on account of insistence of the HPSEB to replace all the materials supplied by the petitioner**:-**

BG No.	Amount	Furnished for	Valid upto
06/04	Rs.24,80,000/-	Performance guarantee Main purchase order	15.04.2008
09/05	Rs.6,21,000/-	Performance guarantee Additional purchase order	01.09.2007
01/05	Rs.2,18,000/-	Performance guarantee PO No.14/2004	30.06.2008
04/05	Rs.4,00,000/-	Earnest money deposit tender 4/05	20.02.2008
05/05	Rs.2,50,000/-	Earnest money deposit tender 9/05	27.02.2008
Total	Rs.39,69,000/-		

According to petitioner disputes between the parties are covered by arbitration agreement and are liable to be referred to

Arbitration. The petitioner on 20.8.2007 through his counsel invoked arbitration clause and sought reference to arbitration. Thereafter the petitioner has filed this application under Section 9 of the Act. for interim directions.

The respondents have filed the reply and have taken preliminary objections that they have right to encash the bank guarantees as per contract, there is no enforceable cause of action in favour of the petitioner and no legal or vested rights of the petitioner have been infringed. On merits the case set up by the petitioner has been denied. The petitioner has filed rejoinder and reasserted his case.

Heard. On 3.9.2007 this Court ordered that respondents shall not revoke the bank guarantees mentioned in para-7 of the petition. This order was extended from time to time and last extension was ordered on 4.10.2007.

The learned counsel for the parties have submitted that Mr. H.M. Dharula Superintending Engineer, (Contract) HPSEB has been appointed Arbitrator to adjudicate the disputes between the parties. The Arbitrator has jurisdiction under Section 17 of the Act to pass interim order. In these circumstances, the order dated 3.9.2007 passed by this Court in this case and extended from time to time is further extended only upto 30.11.2007. The petitioner, if so, advised may file appropriate application in the arbitration proceedings before the Arbitrator for interim relief. The Arbitrator shall decide such application of the petitioner, if filed, in accordance with law and pass such order as he deems fit uninfluenced by any order passed by this

Court in the above case. The parties shall be at liberty to raise all pleas before the Arbitrator which are available to them in law. The petition stands disposed of.

(Kuldip Singh)
Judge

November 6, 2007
(sks)